



## CLOSED CASE SUMMARY

ISSUED DATE: MAY 26, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0075

### **Allegations of Misconduct & Director's Findings**

#### Named Employee #1

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation, 8.400-TSK-3 Use of Force – Involved Officers' Responsibilities During a Type I Investigation	Not Sustained - Training Referral

#### Named Employee #2

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 8.400-TSK-4 Use of Force – Responsibilities of the Sergeant During a Type I Investigation	Not Sustained - Training Referral

#### Named Employee #3

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 8.400-TSK-4 Use of Force – Responsibilities of the Sergeant During a Type I Investigation	Not Sustained - Training Referral

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

It was alleged Named Employee #1 (NE#1) and Named Employee #3 (NE#3) failed to report and document a Type I Use of Force in which they were involved. It was also alleged that Named Employee #2 (NE#2) failed to fulfill his responsibilities as a sergeant during a Type I investigation.

### **SUMMARY OF INVESTIGATION:**

The Complainant was contacted by SPD officers for two separate incidents, one which occurred in August 2022 (August Incident) and another which occurred in November 2022 (November Incident). On February 12, 2023, the Complainant submitted a web-based complaint to OPA. In her complaint, the Complainant alleged, "[t]he police arrested me and when they did they slammed my head on a ground which resulted in 9 stitches." The Complainant listed an incident date of November 23, 2022.

#### *a. Pre-Intake Screening*



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OPA could not immediately locate a record of the Complainant being contacted by SPD officers on November 23, 2022. OPA conducted a pre-intake screening to ascertain whether this complaint was within OPA's jurisdiction. During the pre-intake screening, OPA located SPD records for the August Incident and November Incident—which occurred on November 27, 2022, not November 23.

During the August Incident, the Complainant alleged an officer punched her in the face, causing it to swell, and another officer gave her a cut on her chin. These allegations were sent to OPA on August 31, 2022, to review through the Unsubstantiated Misconduct Screening (UMS) process.<sup>1</sup> OPA reviewed the relevant evidence and determined that these allegations were clearly refuted by evidence and did not require an OPA referral. During the pre-intake screening, the Complainant voluntarily provided OPA with medical records from the August Incident.

OPA also reviewed the evidence from the November Incident, which was recorded on Body Worn Video (BWV). BWV from the November Incident did not depict any injuries on the Complainant. BWV depicted the Complainant did complain of pain to her jaw, but the Complainant stated this was caused from a previous incident of domestic violence. BWV showed that the Complainant was not taken to the ground during the November Incident; instead, the Complainant was arrested from a seated position, stood up, then taken to a police vehicle. BWV showed the Complainant's head was never "slammed" to the ground.

During its review of the November Incident, OPA observed that the Complainant made multiple complaints of pain while being restrained by NE#1 and NE#3. These complaints were also recorded by NE#2's BWV. OPA determined the Named Employees did not document or investigate these complaints as a Type I Use of Force.

OPA opened an investigation. During its investigation, OPA reviewed the OPA Web Complaint, Computer Aided Dispatch (CAD) Call Reports, Incident Reports and Supplements, Medical Records Provided by the Complainant, Unsubstantiated Misconduct Screening (UMS) Documentation, Use of Force Documentation, and Body Worn Video (BWV). OPA also interviewed the Named Employees. OPA communicated with the Complainant on multiple occasions, but the Complainant declined to participate in an interview. After speaking with the Complainant by phone, the Complainant voluntarily provided medical records related to August Incident.

*b. Computer Aided Dispatch Call Report, Incident Report, and Supplemental Reports*

The CAD Call Report for the November Incident indicated that the Complainant was the suspect in a call for a violation of a domestic violence court order. The 9-1-1 caller for the November Incident reported that the Complainant punched and chased him, and the 9-1-1 caller was overheard saying "let go," "let go of my stuff," and "stop following me." The CAD Call Report noted the call was closed as a "DV Order Service (Mandatory Arrest)" by NE#1.

OPA also reviewed the Incident Report for the November Incident. NE#1 wrote the Incident Report, which documented the Complainant's arrest under RCW 26.50.110.4 (Protection Order Violation). NE#1 documented arriving on scene, contacting the Complainant, and confirming the Complainant was the respondent of a protection order. The Complainant alleged she was at a gas station when the Protected Party entered, then followed her out of

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<sup>1</sup> See OPA Internal Operations and Training Manual, Section 8.1 – Unsubstantiated Misconduct Screening. "Allegations of misconduct that are clearly refuted by evidence can be investigated and documented by the chain of command and then screened with OPA via email."



the gas station and struck her with a closed fist. The Protected Party alleged he and the Complainant agreed to meet when a verbal dispute ensued, and the Complainant grabbed his jacket and struck him in the face. NE#1 wrote that probable cause to arrest the Complainant was developed for Violation of a No Contact Order and the Complainant was arrested. NE#1 wrote that NE#2 screened the arrest.

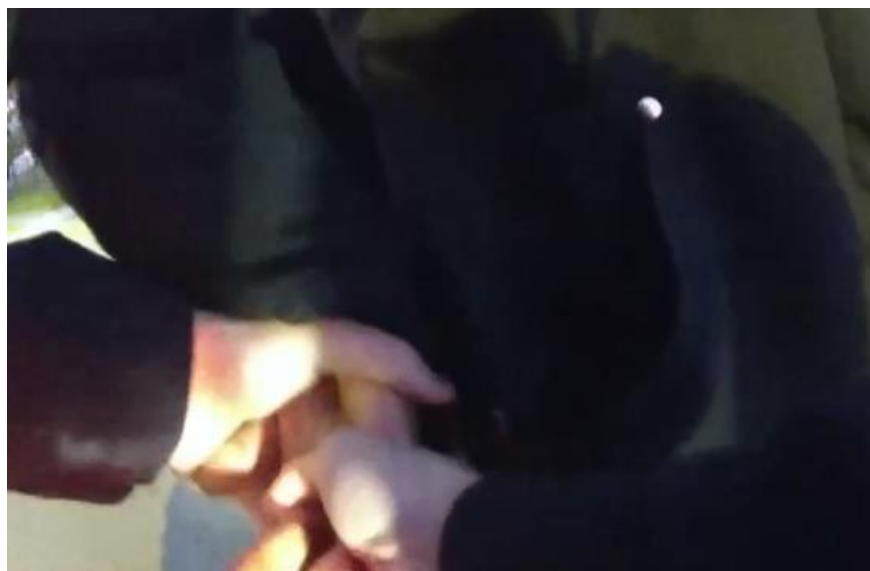
NE#2 wrote an arrest screening template for the November incident. NE#2 confirmed the arrest for Violation of a No Contact Order. NE#2 did not list any injuries or medical conditions. NE#2 did not report any use of force during the incident.

OPA searched SPD databases for any related Use of Force Reports but was unable to locate any for the November Incident.

*c. Body Worn Video*

OPA reviewed the BWV from the November Incident. In relevant part, the BWV depicted the following.

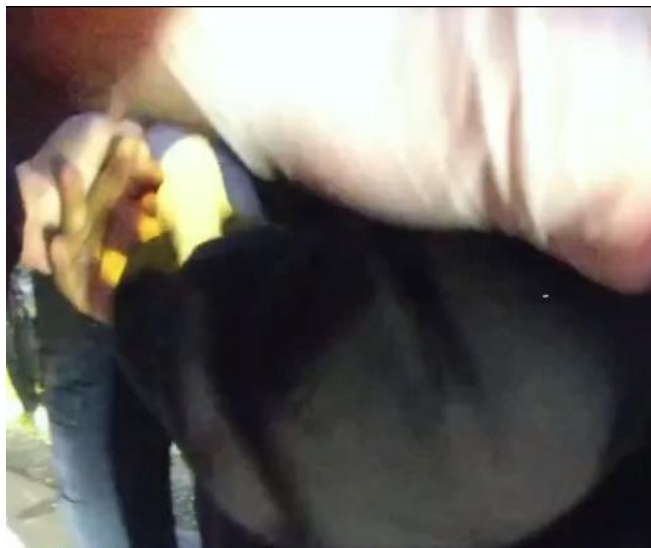
NE#1 contacted the Complainant on a public sidewalk and interviewed her about the incident. After conferring with another officer, NE#1 advised the Complainant she was under arrest and handcuffed her while she was in a seated position. As officers helped stand the Complainant up, the Complainant kicked one foot towards an officer near her feet. The officers grabbed the Complainant's legs and the Complainant stated, "OK, we don't have to do this, I can walk." Officers released the Complainant's legs and she walked to an SPD Patrol car. NE#1 and a female officer then began to search the Complainant incident to her arrest. While searching the Complainant, NE#1 maintained a hold on the Complainant's hands. NE#1 switched which hand he used to hold the Complainant depending on the area of the Complainant being searched.



*Example image of NE#1 holding the Complainant's hands*



As NE#1 and the other officer continued searching the Complainant, NE#1 used his left hand to continue holding the Complainant's pointer finger. As NE#1 continued searching the Complainant, she said "Ow" about three times. Officers replied calmly to the Complainant, instructing her to take a deep breath.



*NE#1 using his left hand to hold Complainant's pointer finger*

The Complainant then turned away from NE#1 and towards another officer. NE#1 responded by grabbing the Complainant's hand by her pinky and ring finger with NE#1's right hand while continuing to hold the Complainant's thumb and index finger with NE#1's left hand.



*NE#1 holding the Complainant's fingers*



NE#1 instructed the Complainant to stop, and the Complainant said “Ow” several times and turned her body towards NE#1. The Complainant stated “Ow, my fingers, why you gotta do that to my fingers?” NE#1 informed the Complainant that everything was being recorded. The Complainant told NE#1 to show the camera what NE#1 was doing to the Complainant’s fingers. During this time, NE#1’s BWV captured the hold NE#1 had on the Complainant’s fingers. NE#1 responded, “yeah, look, right here, it’s right there, this is the camera, ok?” The Complainant then screamed to get her hoodie back. A female officer responded, telling the Complainant to stop, “moving and screaming.” After the search incident to arrest was completed, BWV showed NE#1 letting go of the Complainant’s fingers and holding the Complainant’s arms near her bicep. BWV depicted NE#1 holding the Complainant’s fingers for about one minute and twenty-one seconds.

About a minute later, NE#1 and other officers—including NE#3—put the Complainant in the back of an SPD vehicle to be transported to King County Jail. The Complainant struggled against officers efforts to put her in the car. As NE#1 tried to push the Complainant into the car, the Complainant attempted to hold on to the vehicle door frame and stated “Ow.” Officers were able to get the Complainant into a seated position, but the Complainant’s legs remained outside the vehicle door. As the Complainant straightened her legs outside of the vehicle, NE#3 pushed the Complainant back, sliding her into completely onto the SPD vehicle’s back seat. The Complainant stated “Ow” twice again. The SPD vehicle’s rear door was then closed.

NE#2’s BWV showed that NE#2 was present during the Complainant’s “ow” statements both while she was being searched and placed into the back of the SPD vehicle.

*d. OPA Interview – Named Employee #1*

OPA interviewed NE#1 who stated he has worked as a police officer for SPD for about three years. NE#1 recalled establishing probable cause to arrest the Complainant. NE#1 stated he was assisting with controlling the Complainant while a female officer on scene principally conducted the search incident to the Complainant’s arrest. NE#1 stated the Complainant was moving around and not complying with the search, so he grabbed the Complainant’s hand by the pinky and ring finger to restrict her movement. NE#1 recalled the Complainant making complaints of pain during this time and later when she was put in the back of the patrol vehicle. NE#1 stated NE#2 observed the entire incident and informed him that it was *de minimis* force. NE#1 admitted not completing a Use of Force report, but stated he screened the incident with NE#2.

*e. OPA Interview – Named Employee #2*

OPA interviewed NE#2. NE#2 stated he has worked for SPD for about eighteen years and has been a sergeant since about 2018-2019. NE#2 stated he recalled hearing the Complainant make complaints of pain about her fingers during her search and general complaints of pain when she was placed in the patrol vehicle. NE#2 stated his perception was that the Complainant was not being truthful based on other interactions he had with the Complainant. NE#2 stated it would not have been required under policy for his subordinate officers to report the complaints of pain because he was present at the scene and observed the complaints. NE#2 stated his usual practice would be “if someone says



‘ouch,’ that – that instigates, for me, an investigation.” Regarding the lack of a Type I investigation in this instance, NE#2 stated.

*After watching the video again, it’s obvious that I made a mistake and that the officers, you know -- and as the policy says, that I’m responsible for everything my officers do or do not do. Therefore, this entire situation is on me and not on the officers. They didn’t -- I don’t think they were – they’re not ready to be – it’s nonsensical for them to report-- report them using force, if I’m standing right there, watching them. You know, it was my mistake and I should have documented it.*

*f. OPA Interview – Named Employee #3*

OPA interviewed NE#3, who said he has been a police officer at SPD for about six-and-a-half years. NE#3 stated probable cause was established for the Complainant and that NE#2 was present for the Complainant’s arrest. NE#3 described the Complainant’s behavior as drunk escalated, and mildly aggressive. NE#3 admitted that, on review of BWV, the Complainant stated “Ow” several times, but he did not interpret those as complaints of pain because the officers’ actions at the time would not have caused pain. NE#3 stated he did not report the complaints of pain and noted that NE#2 was standing nearby. NE#3 admitted not completing any Use of Force Report for this incident as he did not consider there to have been any force used and he was not ordered to complete a report.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

***8.400 - Use of Force Reporting and Investigation, 8.400-TSK-3 Use of Force – Involved Officers’ Responsibilities During a Type I Investigation***

It was alleged that neither NE#1 nor NE#3 completed actions required by policy as involved officers in Type I Uses of Force.

Type I Use of Force is force that “causes transitory pain or *the complaint of transitory pain*.” SPD Policy 8.050 (emphasis added). SPD Policy requires that the involved officer in a Type I Use of Force perform a series of steps to comply with Force Reporting Requirements. SPD Policy 8.400-TSK-3. Among the requirements are that the involved officer notify an on-duty sergeant, document the incident, and complete a Type I Use of Force Report in Blue Team. *Id.*

By their own admission, neither NE#1 nor NE#3 completed the required steps as involved officers in a Type I Use of Force. Both officers and their sergeant, NE#2, noted to OPA that NE#2 was present throughout this incident, heard the complaints of pain, and did not order either officer to complete a Type I Use of Force Report. Conversely, SPD Policy 8.400-TSK-3 does not require that a sergeant order the officer to complete the steps following a Type I Use of Force, but OPA also recognizes the attendant considerations with respect to *Garrity* if the officer is not actually ordered to complete the Use of Force Report. Here, on balance, it appears that neither NE#1, NE#3, nor their sergeant, NE#2, recognized the need to complete a Type I Use of Force following the Complainant’s statements of “Ow” in connection with their otherwise *de minimis* force.



Given the failure of NE#2 to order NE#1 and NE#3 to complete a Type I Use of Force report, OPA finds that NE#1's and NE#3's failure to complete the required steps possibly constituted misconduct but was not willful and did not rise to the level of serious misconduct.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policy 8.400-TSK-3 with NE#1, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

#### **Named Employee #2 - Allegation #1**

#### ***8.400 - Use of Force Reporting and Investigation 8.400-TSK-4 Use of Force – Responsibilities of the Sergeant During a Type I Investigation***

It was alleged that NE#2 did not complete actions required by policy as a Sergeant during a Type I Uses of Force.

SPD Policy 8.400-TSK-4 sets forth the specific steps for a sergeant to follow during a Type I Investigation. See SPD Policy 8.400-TSK-4. Among those tasks is to determine if the use of force is appropriately classified as a Type I incident and direct involved officers to complete Type I Use of Force Reports. See *id.*

NE#2 did not, among other things, classify this Type I incident as such and did not order the involved officers to complete required reports. NE#2 recognized and accepted his mistake to OPA during his interview. NE#2 also recognized his higher level of responsibility and culpability for this error as sergeant with nearly two decades of police experience. NE#2's failure in this respect clearly violated policy.

However, OPA also recognizes that the purpose of the accountability system is principally corrective, not punitive. Moreover, throughout his nearly two decades of work history at SPD, this is the first allegation related to force reporting against NE#2. Finally, NE#2 has already recognized his error in this instance. OPA finds that a training referral is most appropriate in this instance. However, NE#2 is warned that any future findings that he failed to ensure force—his own or those under his command—was appropriately reported and investigated will result in a Sustained finding.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2's chain of command should discuss OPA's findings with NE#2, review SPD Policy 8.400-TSK-4 with NE#2, and provide any further retraining and counseling that it deems appropriate. This training and counseling should include the requirement that NE#2 brief officers under his command on his expectations that Type I force reporting comply with policy. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**





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**Named Employee #3 - Allegation #1**

***8.400 - Use of Force Reporting and Investigation, 8.400-TSK-3 Use of Force – Involved Officers’ Responsibilities During a Type I Investigation***

For the reasons set forth above at Named Employee #1, Allegation #1, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#3’s chain of command should discuss OPA’s findings with NE#3, review SPD Policy 8.400-TSK-3 with NE#3, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**